



FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds:

1. On January 6, 1996, claimant was working as a volunteer at the respondent's thrift shop. Claimant alleges that he fell forward and fractured his left hip after slipping on a slick floor. Claimant described the accident as follows:

I was carrying boxes in from the outside and it had been snowing or ice -- ice that morning and I entered the building. It's a concrete floor and on my second -- on my second step, in other words, my right, left, my second step, I hit an ice spot or a piece of ice and I went down onto my left side and my head -- we've got a sorting table like what you got there. . . . My head hit, hit the table. I cut it and --<sup>1</sup>

. . .

Well, I came in to the front, front door which is the south part of the building and I made two steps, my right, my left step, my left -- my second step, I hit this ice spot and I fell onto my left side onto the concrete and my head, in other words, I was falling forward, and I hit my head on the -- this table.<sup>2</sup>

2. The Appeals Board affirms the Judge's finding and conclusion that claimant's accident arose out of and in the course of employment. The Appeals Board finds claimant's description of the accident credible and persuasive.

Neither of claimant's co-workers, Virginia Wilhelm or Rose Kramer, saw claimant fall although they were working nearby. Ms. Kramer did not believe claimant was carrying a box at the time that he fell, but she was busy waiting on customers. Ms. Wilhelm admits that she does not know what claimant was doing when he fell as she had her back to him. Ms. Wilhelm readily admits that she does not know if claimant fell immediately after entering the building from the outdoors. But Ms. Wilhelm remembers clearly that claimant was conscious immediately after the fall, which indicates that claimant did not fall due to a seizure which he sometimes experiences due to a 1966 brain injury.

3. The Appeals Board finds that claimant fractured his left hip in the January 6, 1996 accident. That conclusion is supported by the opinion of Dr. Phillip L. Baker, the physician who first diagnosed the fracture and performed the total hip replacement. There is no other expert medical opinion in the record to controvert Dr. Baker's.

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<sup>1</sup> Regular Hearing, March 4, 1999; pp. 14 and 15.

<sup>2</sup> Regular Hearing, March 4, 1999; pp. 29 and 30.

4. The parties stipulated that claimant has “a 20 percent functional impairment at the hip”<sup>3</sup> as a result of the hip fracture and surgery. Using the tables found in the revised third edition of the *AMA Guides to the Evaluation of Permanent Impairment*, the Appeals Board finds that claimant has an eight percent whole body functional impairment.

#### CONCLUSIONS OF LAW

1. Because claimant’s injury should be compensated as an unscheduled injury, the Award should be modified to grant claimant benefits for an eight percent whole body functional impairment.

2. Kansas Administrative Regulations in effect on the date of accident provided that a hip injury should be compensated as an “unscheduled” injury.

An injury involving the hip joint and an injury involving the shoulder joint shall be computed on the basis of a disability to the body as a whole.<sup>4</sup>

3. Because the hip injury is an unscheduled injury, claimant’s permanent partial general disability benefits are determined by the formula set forth in K.S.A. 44-510e. That statute provides:

. . . The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. . . . An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

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<sup>3</sup> Regular Hearing, March 4, 1999; p. 6. Respondent’s May 19, 1999 submission letter to Judge Benedict; p. 2.

<sup>4</sup> K.A.R. 51-7-8(d)(3).

Claimant neither requested nor presented evidence to establish a disability greater than the functional impairment rating. Therefore, the permanent partial general disability is limited to the eight percent whole body functional impairment rating.

4. The Appeals Board adopts the findings and conclusions set forth in the Award to the extent they are not inconsistent with the above.

**AWARD**

**WHEREFORE**, the Appeals Board modifies the June 15, 1999 Award to grant claimant benefits for an unscheduled injury, as follows:

Donald B. Lackey is granted compensation from Sts. Peter & Paul Church and its insurance carrier for a January 6, 1996 accident and resulting disability. Based upon an average weekly wage of \$25, Mr. Lackey is entitled to receive 21.29 weeks of temporary total disability benefits at \$16.67 per week, or \$354.90, followed by 32.70 weeks of permanent partial general disability benefits at \$16.67 per week, or \$545.11, for an eight percent permanent partial general disability, making a total award of \$900.01, which is all due and owing less any amounts previously paid.

The Appeals Board adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 2000.

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BOARD MEMBER

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c: Jeffrey W. Jones, Topeka, KS  
Eric T. Lanham, Kansas City, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director